

the whole or a part only, will be settled upon her for that purpose. The fund in that case as in this, consisted of the proceeds of the real estate of the wife sold under a decree of this court, for the purpose of partition among the heirs at law. The parties claiming them were judgment creditors of the husband, who prayed that the equivalent for his curtesy interest in his wife's land might be paid to them, and the question was whether that interest should be taken out of the proportion of the proceeds of the sale assigned by the report of the Auditor to the husband and wife and paid to his creditors. But it was decided that the whole fund being necessary to provide an adequate support for the wife and children, the whole should be devoted to that object, and the decision, it is believed, is fully authorized by the present doctrine of the court upon this subject. It is a question always of course, whether the circumstances justify the application of the principle to the particular case. The wife is entitled to a provision out of her estate when the aid of a court of equity is necessary to enable the husband or his assignee to get possession of it, as a matter of right. It does not rest in the discretion of the court to give or withhold. Her title to a provision is placed by the Court of Appeals in *Duwall vs. The Farmers Bank of Maryland*, 4 G. & J., 282, upon the firm ground of principle, and not upon the shifting and unsatisfactory footing of discretion, which is a foundation far too insecure for so important and useful a doctrine to rest upon. But though the right to a provision rests upon this solid ground, the amount is necessarily a subject of discretion, depending upon the special circumstances of each particular case, as it arises. The object of the rule is to provide a suitable and adequate provision for the wife and children, and to attain this object, when necessary, the court will give her the whole of her property, regarding that object as paramount to the rights of the husband or the husband's creditors.

The circumstances of this case, it has been forcibly urged, distinguish it strongly from that of *Mc Vey and wife vs. Taylor*, and perhaps the points of difference are so marked, that it would not be easy to make the decision in the latter, so far as this particular question is concerned, applicable to the former.